

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CRESTA CAPITAL STRATEGIES, LLC,

Plaintiff,

- against -

APPROVED CASH ADVANCE CENTERS, LLC,

Defendant.  
-----X

Case No.: 08-2399  
(Kaplan, J.)  
(Peck, M.J.)

**AFFIDAVIT OF**  
**JEFFREY A. MILLER, ESQ.**

STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NASSAU     )

JEFFREY A. MILLER, being duly sworn, deposes and states:

1. I am a partner with the law firm Westerman Ball Ederer Miller & Sharfstein, LLP, counsel for plaintiff Cresta Capital Strategies, LLC ("Cresta"). As such, I am fully knowledgeable about the facts stated herein. I respectfully submit this affidavit in support of Cresta's motion for sanctions against defendant Approved Cash Advance Centers, LLC ("ACA") for its failure to appear at the Court-ordered settlement conference on June 30, 2008.

2. On June 23, 2008, Your Honor issued an Order For Settlement Conference (the "Order", attached hereto as Exhibit "A") directing that, among other things:

A settlement conference is scheduled for June 30, 2008 at 11:00 a.m. before Magistrate Judge Andrew J. Peck. . . . Counsel attending the conference must have full settlement authority **and their client(s) must be present at the conference**, as must a representative of the client's insurance company where the decision to settle and/or

amount of settlement must be approved by the insurance company.

*See Exhibit "A" (emphasis added).*

3. In addition to the Order, all counsel also received specific instructions by telephone from Your Honor's Chambers as to the date and time of the Conference along with the **specific direction that our respective clients must attend.**

4. On June 30, 2008, I appeared at the settlement conference along with **three** representatives of Cresta with full settlement authority: Abraham Mirman, Michael Mirman, and Jonathan Loew.

5. However, while ACA's counsel appeared at the conference, **nobody from ACA appeared.** Instead, one of ACA's attorneys, John Anderson, Esq., identified himself as "the client."

6. Defendant did not even notify me in advance of the conference that a client representative would not attend.

7. Since ACA flagrantly violated the Order, the settlement conference was largely unproductive. While ACA failed to show up, Cresta had three of its people appear, and was forced to waste its time and spend legal fees and expenses. As set forth in the accompanying memorandum of law, sanctions are appropriate (as Your Honor expressly found under identical circumstances in a different case).

8. In connection with my appearance at the conference, Cresta has incurred \$4,365.00 in legal fees. A copy of my firm's invoice (for only time related to the settlement conference) is attached as Exhibit "B" hereto. We respectfully request that the Court order ACA and/or its attorneys to reimburse Cresta for these legal fees and expenses.

**WHEREFORE**, on behalf of Cresta, I respectfully request that the Court grant Cresta's motion in its entirety, and grant Cresta such other and further relief as the Court deems just, proper and equitable.

  
\_\_\_\_\_  
JEFFREY A. MILLER

Sworn to before me this  
16 day of July, 2008

  
\_\_\_\_\_  
Notary Public

116895-3

PHYLLIS HALPERN  
NOTARY PUBLIC, State of New York  
No. 4847763  
Qualified in Nassau County  
Commission Expires March 30, 2011

**EXHIBIT "A"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOCS  
DATE FILED: 6/23/08

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CRESTA CAPITAL STRATEGIES, L.L.C., :

Plaintiff, :

08 Civ. 2399 (LAK) (AJP)

-against- :

ORDER FOR SETTLEMENT CONFERENCE

APPROVED CASH ADVANCE CENTERS, L.L.C., :

Defendant. :

----- x

**ANDREW J. PECK, United States Magistrate Judge:**

A settlement conference is scheduled for June 30, 2008 at 11:00 a.m. before Magistrate Judge Andrew J. Peck in Courtroom 20D, 500 Pearl Street. Counsel attending the conference must have full settlement authority and their client(s) must be present at the conference, as must a representative of the client's insurance company where the decision to settle and/or amount of settlement must be approved by the insurance company.

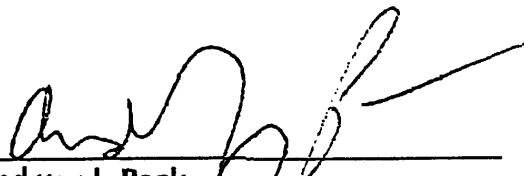
On or before 5:00 p.m. on June 26, 2008, counsel shall provide a confidential settlement memorandum to my chambers via fax (212-805-7933). The memorandum shall not be filed with the Clerk of the Court nor provided to opposing counsel. The memorandum should explain the factual and legal background of the case as it impacts on settlement negotiations; the status of prior settlement discussions between the parties, if any; and the

party's settlement proposal (range). The latter should be the realistic settlement range of that party, not just the party's "opening bid." The settlement range in the settlement memorandum will be kept confidential by me and not disclosed to opposing counsel. I strongly suggest that the settlement memorandum not exceed 15 pages (counsel may file a longer memorandum without leave of court if counsel truly believes it is necessary; however, any memorandum in excess of 15 pages must be filed two weeks before the conference).

The parties are to follow the "Individual Practices of Magistrate Judge Andrew J. Peck," a copy of which is attached.

SO ORDERED.

DATED: New York, New York  
June 23, 2008

  
\_\_\_\_\_  
Andrew J. Peck  
United States Magistrate Judge

Copies by fax & ECF to: Daniel G. Lyons, Esq.  
H. Wayne Grant, Esq.  
Charles J. Scheld, Esq.  
Judge Lewis A. Kaplan

**EXHIBIT "B"**

**WESTERMAN BALL EDERER MILLER & SHARFSTEIN, LLP**

170 Old Country Road  
Suite 400  
Mineola, New York 11501  
Telephone No. 516.622.9200  
Facsimile No. 516.622.9212  
Tax I.D. No. 11-3460481

Invoice submitted to:  
Cresta Capital Strategies, LLC  
1175 Walt Whitman Road  
Suite 100  
Melville NY 11747  
Attn: Avi Mirman

July 15, 2008  
In Reference To: Approved Cash Advance Centers  
Invoice #42333  
Client No. 7289-3

## Professional Services

			<u>Hours</u>	<u>Amount</u>
6/23/2008	DL	Review order re: settlement conference; email to clients re: same.	0.20	73.00
6/24/2008	DL	Draft settlement conference memorandum; conference re: same; review pleadings and other files re: same.	1.00	365.00
6/25/2008	DL	Revise settlement conference memorandum; emails re: same.	1.50	547.50
	JAM	Revise confidential settlement memo; review client comments.	1.50	712.50
6/26/2008	DL	Finalize and file settlement conference memorandum; email to client re: settlement conference.	0.80	292.00
6/30/2008	JAM	Preparation for and attend mediation in NYC.	5.00	2,375.00
			<u>10.00</u>	<u>\$4,365.00</u>

## Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Daniel Lyons	3.50	365.00	\$1,277.50
Jeffrey A. Miller	6.50	475.00	\$3,087.50